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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ALFARO-VILLEGAS, FRANCISCO

Petitioner,

V.

MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security; TODD BLANCHE United States Attorney General; TODD LYONS, Director of United States Immigration and Customs Enforcement; BRYAN WILCOX, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security; John Mattos Warden, Nevada Southern Detention Center UNITED STATES DEPARTMENT OF HOMELAND SECURITY; UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT;

Respondents

[redacted] Detained

Case File No.:

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

This is a petition for a writ of habeas corpus filed on behalf of Francisco Alfaro Villegas ("Petitioner") seeking relief to remedy his unlawful detention. Respondents are detaining Petitioner pending his deportation proceedings. Petitioner has fully cooperated with Respondents for said proceedings. To date, Petitioner has been detained for more than two-hundred and seventy (270) days,

since September 24, 2025. *See,* Exhibit A, FORM I-213.

Petitioner is not a flight risk or a danger to the community. His prolonged detention is no longer justified under the Constitution or the Immigration and Nationality Act (INA).

The I-213 form refers to section 237(a)(i)(B) of the Immigration and Nationality act as the basis for petitioner's removal. *Id.*

On or about July 13, 2026, an Immigration Judge ("IJ") denied Petitioner bond, finding Petitioner is a danger to the community. *See,* Exhibit B, Bond Order.

Respondents' actions defy the U.S. Constitution and the Immigration and Nationality Act (INA). Petitioner seeks an order from this Court declaring his continued and prolonged detention unlawful and ordering Respondents to release Petitioner on parole under 8 USC §1226 (a)(2)(B).

CUSTODY

1. Petitioner is in the physical custody of Respondents. At the time of the filing of this petition, Petitioner is detained at the Nevada Southern Detention Center ("NSDC") in Pahrump, NV. NSDC contracts with the Department of Homeland Security to detain aliens such as Petitioner. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

2. This action arises under the Constitution of the United States, the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et. seq., as amended by the Illegal

Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570. This Court has jurisdiction under 28 U.S.C. 2241, art. I, § 9, cl. 2 of the United States Constitution ("Suspension Clause") and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States and such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

3. Venue lies in the United States District Court for the District of Nevada, the judicial district where Petitioner is detained. 28 U.S.C. § 1391(e).

PARTIES

4. Petitioner is a national and citizen of Guatemala. *See Exhibit A.*

5. Respondent MARKWAYNE MULLIN is the Secretary of the U.S. Department of Homeland Security ("DHS"), an agency of the United States. He is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(a). Secretary Mullin is a legal custodian of Mr. Alfaro. He is named in his official capacity. Respondent's address is Department of Homeland Security, Washington, D.C. 20528.

6. Respondent Todd Blanche is the Attorney General of the United States and the most senior official in the U.S. Department of Justice ("DOJ"). He has the authority to interpret immigration laws and adjudicate removal cases. 8 U.S.C. §

1103(g). The Attorney General delegates this responsibility to the Executive Office for Immigration Review ("EOIR"), which administrates the immigration courts and the BIA. He is named in his official capacity. Respondent's address is 950 Pennsylvania Avenue, NW, Washington, D.C. 20520-0001.

7. Respondent TODD LYONS is the Director of the United States Immigration and Customs Enforcement within the Department of Homeland Security, an agency of the United States. He is responsible for the administration and enforcement of immigration laws. He is named in his official capacity. Respondent's address is 500 12th St. SW, Washington, D.C. 20536.

8. Respondent Bryan Wilcox is the Field Office Director for Detention and Removal, U.S. Immigration Customs and Enforcement, Department of Homeland Security. Pursuant to Respondent Wilcox's orders, Mr. Alfaro remains detained. Respondent Wilcox is named in his official capacity. Respondent's address is 2975 Decker Lane Dr, Suite 100, West Valley City, UT 84119.

9. Respondent Warden is Petitioner's immediate custodian and resides in the judicial jurisdiction of the Ninth Circuit of the United States Court of Appeals. Warden is named in his official capacity.

10. The Department of Homeland Security (DHS) is a federal agency charged with administering statutes and regulations governing immigration pursuant to 6 U.S.C. §§ 111-115. Respondent's address is Department of Homeland Security, Washington, D.C. 20528.

11. The United States Immigration and Customs Enforcement is a federal sub-agency under DHS responsible for the administration and enforcement of the United States' immigration laws pursuant to 22 C.F.R. 127.4. Respondent's field office address here in Las Vegas is 501 S Las Vegas Blvd, Suite 200, Las Vegas, NV 89101.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

12. Petitioner has exhausted his administrative remedies to the extent required by law. Petitioner's only remedy is by way of this judicial action. That is, there is no statutory exhaustion requirement in 28 U.S.C § 2241. To the extent that this Court requires prudential exhaustion, it should be waived because "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004).

STATEMENT OF FACTS

13. Petitioner is a national and citizen of Guatemala who entered the U.S. approximately in 2003. *See,* Exhibit C, Bond Motion.

14. Petitioner has now been in detention for more than two-hundred and seventy (270) days, since September 24, 2025 when ICE officers took Petitioner into custody. *See,* Exhibit A. Petitioner is charged as removable under Section 237(a)(i)(B) of the INA. *Id.*

15. Petitioner has convictions for drug possession and larceny in 2016 and attempted possession of forgery device in 2025. *See,* Exhibit A.

16. Petitioner has deep roots in this community, including full-time employment. *See,* Exhibit C.

17. Prior to his detention, Petitioner was working, paying his taxes, and providing for his family. His continued detention deprives his family of his companionship and income. Nonetheless, the Immigration Judge denied bond.

Petitioner notes that prudential exhaustion is not required where "there are a number of exceptions to the general rule requiring exhaustion, covering situations such as where administrative remedies are inadequate or not efficacious, . . . [or] irreparable injury will result . . . ." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). In addition, a court may waive an exhaustion requirement when "requiring resort to the administrative remedy may occasion undue prejudice to subsequent assertion of a court action." *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992), superseded by statute on other grounds as stated in *Booth v. Churner*, 532 U.S. 731, 739–41 (2001). "Such prejudice may result . . . from an unreasonable or indefinite timeframe for administrative action." *Id.* at 147 (citing cases). Here, the exceptions regarding irreparable injury and agency delay apply and warrant waiving any prudential exhaustion requirement.

As with the irreparable harm analysis, "in cases involving a constitutional claim, a likelihood of success on the merits . . . strongly tips the balance of equities

and public interest in favor of granting a preliminary injunction." *Baird*, 81 F.4th at 1048.

A. Irreparable Injury

The first exception to any prudential exhaustion requirement that applies here is that of irreparable injury. Each day Petitioner remains in detention is one in which his statutory rights have been violated and he could be free. Similarly situated district courts have repeatedly recognized this fact. As one court has explained, "because of delays inherent in the administrative process, BIA review would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process." *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (internal quotation marks omitted). Indeed, "if Petitioner is correct on the merits of his habeas petition, then Petitioner has already been unlawfully deprived of a [lawful] bond hearing[,] [and] . . . each additional day that Petitioner is detained without a [lawful] bond hearing would cause him harm that cannot be repaired." *Villalta v. Sessions*, No. 17-CV-05390-LHK, 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2, 2017) (internal quotation marks and brackets omitted); see also *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (similar). Other district courts have echoed these points.

The district courts that have recognized that irreparable harm exists here are well-supported by Ninth Circuit case law. At issue in this case is civil detention, which "violates due process outside of 'certain special and narrow nonpunitive

circumstances.'" *Rodriguez*, 909 F.3d 5 See, e.g., *Perez v. Wolf*, 445 F. Supp. 3d 275, 286 (N.D. Cal. 2020); *Blandon v. Barr*, 434 F. Supp. 3d 30, 37 (W.D.N.Y. 2020); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 961 (N.D. Cal. 2019); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003–04 (N.D. Cal. 2018); *Montoya Echeverria v. Barr*, No. 20-CV-02917-JSC, 2020 WL 2759731, at *6 (N.D. Cal. May 27, 2020); *Rodriguez Diaz v. Barr*, No. 4:20-CV-01806-YGR, 2020 WL 1984301, at *5 (N.D. Cal. Apr. 27, 2020); *Birru v. Barr*, No. 20-CV-01285-LHK, 2020 WL 1905581, at *4 (N.D. Cal. Apr. 17, 2020*); Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *7 (N.D. Cal. Dec. 24, 2018). at 257 (quoting *Zadvydas*, 533 U.S. at 690). Petitioner has a "fundamental" interest in such a hearing, as "as "freedom from imprisonment is at the 'core of the liberty protected by the Due Process Clause.'" *Hernandez*, 872 F.3d at 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). This point is "beyond dispute." Id.; see also *Marin*, 909 F.3d at 256–57. Moreover, the irreparable injury Petitioner faces extends beyond a chance at physical liberty. There are several "irreparable harms imposed on anyone subject to immigration detention[.]" *Hernandez*, 872 F.3d at 995. These include "subpar medical and psychiatric care in ICE detention facilities," as well as the "collateral harms to children of detainees whose parents are detained." *Id.*

B. Agency Delay

Second, the BIA's delays in adjudicating bond appeals warrant excusing any

exhaustion requirement. The court's ability to waive exhaustion based on delay is especially broad here given the interests at stake. As the Ninth Circuit has explained, Supreme Court precedent "permits a court under certain prescribed circumstances to excuse exhaustion where 'a claimant's interest in having a particular issue resolved promptly is so great that deference to the agency's judgment [of a lack of finality] is inappropriate.' " *Klein v. Sullivan*, 978 F.2d 520, 523 (9th Cir. 2002).

Moreover, the Supreme Court has explained that "[r]elief [when seeking review of detention] must be speedy if it is to be effective." *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

Despite this fundamental interest and the Supreme Court's admonition that only speedy relief is meaningful, the BIA takes over half a year in most cases to adjudicate an appeal of a decision denying bond. Its own data demonstrates this fact.

Waiting several months, half a year, or even a year to review a custody determination is not reasonable; to the contrary, it exhibits significant disregard for the "fundamental" interests at stake. The Ninth Circuit has signaled that the protections afforded to criminal Respondents in pre-trial civil detention should apply in the civil immigration context. In *Gonzales v. U.S. Immigration & Customs Enforcement*, the Court of Appeals held that the Fourth Amendment "requires a prompt probable cause determination by a neutral and detached magistrate to

justify continued detention" of a noncitizen facing removal. 975 F.3d at 798; see also id. at 823–26. Similar principles demonstrate why the BIA's review here is so patently unreasonable. The protections and quick review of detention orders afforded criminal Respondents are rooted in the Fifth Amendment's Due Process Clause, see *Salerno*, 481 U.S. at 746–47, and many of those principles unquestionably apply to noncitizens, see, e.g., *Zadvydas*, 533 U.S. at 690–91 (repeatedly citing *Salerno* and other Fifth Amendment civil detention caselaw). Thus, as with the rights at issue in *Gonzalez*, the rights of federal criminal Respondents facing pretrial civil detention demonstrate that the BIA's months- or even years-long review of a noncitizen's civil detention is an "unreasonable . . . timeframe for administrative action." *McCarthy*, 503 U.S. at 147.

Conditions of Confinement

18. During his detention at Nevada Southern Detention Center ("NSDC"), Petitioner has been subjected to discriminatory treatment by facility staff. On or about February 7, 2026, Petitioner filed a formal grievance reporting that a detention officer made racist, prejudicial, and discriminatory comments toward him concerning his immigration status and background. Petitioner further reported that he requested to speak with a supervisor and that his requests were denied. NSDC officials subsequently approved the grievance for investigation. *See,* Exhibit D Complaint.

19. The fact that facility officials approved Petitioner's grievance for investigation demonstrates that Petitioner's complaints were sufficiently serious to warrant formal review and support Petitioner's contention that his confinement has been accompanied by improper and discriminatory treatment. *Id.*

Medical Condition and Treatment

20. Petitioner has repeatedly sought medical attention while detained through written sick-call requests submitted to NSDC medical staff. Medical records reflect multiple requests for evaluation and treatment of physical complaints. *See,* Exhibit E Medical Record.

21. Diagnostic imaging performed while Petitioner was detained revealed narrowing of the right-knee joint space due to degenerative changes, together with degenerative spurring involving the tibial spine and femoral condyles. The radiology report concluded that Petitioner suffers from mild degenerative changes of the right knee. *Id.*

22. Petitioner's prolonged detention has therefore resulted in continuing physical hardship and ongoing medical needs that require monitoring and treatment while he remains in civil immigration custody.

Respondents' continued detention of Petitioner is contrary to the law.

CLAIMS FOR RELIEF

COUNT ONE CONSTITUTIONAL CLAIM

23. Petitioner re-alleges and incorporates by reference paragraphs 1 through 22 as

though fully set forth herein.

24. Petitioner's continued detention violates the substantive and procedural protections of the Due Process Clause of the Fifth Amendment.

25. Freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause. The Ninth Circuit has repeatedly recognized that civil immigration detention implicates a fundamental liberty interest and that immigration detainees retain Fifth Amendment protections during detention. *Hernandez v. Sessions*, 872 F.3d 976, 993-95 (9th Cir. 2017).

26. Petitioner possesses substantial equities favoring release, including long-term residence in the United States, a stable residence, employment history, a United States citizen spouse, and four United States citizen children. Petitioner has also appeared for required court proceedings and has not attempted to flee prosecution or lawful process.

27. Petitioner's continued detention has become excessive in relation to the government's asserted regulatory interests. Immigration detention is civil rather than punitive. Due process prohibits detention that is excessive, arbitrary, or unreasonable in relation to its stated purpose.

28. Petitioner's confinement has been accompanied by documented discriminatory treatment from detention staff and ongoing medical concerns requiring repeated requests for medical attention. These conditions further demonstrate the substantial and continuing harms caused by Petitioner's detention.

29. Under the Fifth Amendment, continued detention under these circumstances is no longer reasonably related to a legitimate regulatory purpose and therefore violates Petitioner's rights to substantive and procedural due process.

COUNT TWO STATUTORY CLAIM

30. Petitioner alleges and incorporates by reference paragraphs 1 through 29 above.

31. Petitioner's continued detention violates the Immigration and Nationality Act, 8 USC §1226, and the U.S. Constitution.

COUNT THREE

32. Petitioner re-alleges and incorporates by reference all preceding paragraphs.

33. Immigration detention is civil in nature. Civil detainees may not be subjected to punitive conditions of confinement or treatment inconsistent with the Due Process Clause.

34. While confined at NSDC, Petitioner filed a grievance alleging racist, discriminatory, and prejudicial treatment by detention staff. Facility officials approved that grievance for investigation.

35. Petitioner has also experienced ongoing medical issues requiring repeated requests for evaluation and treatment while in detention, including documented degenerative changes to his right knee.

36. The combination of prolonged detention, discriminatory treatment, and continuing medical issues demonstrates that Petitioner's confinement has become

unnecessarily burdensome and punitive in effect.

37. Accordingly, Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment.

COUNT FOUR

38. If he prevails, Petitioner requests attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief: 1. Assume jurisdiction over this matter; 2. Issue an order directing Respondents to show cause why the writ should not be granted; 3. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1226, and the Immigration and Nationality Act; 4. Issue a writ of habeas corpus ordering Respondents to release Petitioner on parole under 8 USC §1226 (a)(2)(B); 5. Award Petitioner reasonable costs and attorney's fees; and, 6. Grant any other relief which this Court deems just and proper.

Respectfully submitted,

/s/ Jeremy Mondejar

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VERIFICATION OF COUNSEL

I, Jeremy Mondejar, hereby certify that I am familiar with the case of the named petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

/s/Jeremy Mondejar

Jeremy Mondejar